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March 15, 2002

Via Hand Delivery

Mary Cottrell
Secretary
Department of Public Utilities
One South Station, 2nd Floor
Boston, MA 02110

Re: MA DTE 01-34

Dear Ms. Cottrell:

I am writing on behalf of AT&T and WorldCom with respect to yesterday's Hearing Officer Ruling on Amendment to the Procedural Schedule ("Hearing Officer Ruling"), in which the Department adjourned the start of the upcoming hearings in its Special Access investigation by five weeks, from March 25 to April 29, 2002. As discussed below, we believe the date for filing of CLEC surrebuttal testimony should likewise be adjourned, although by a more modest period of two weeks. During a brief telephone conference among counsel for AT&T, counsel for WorldCom and the Hearing Officer, we were invited to file expedited comments to (1) alert the Department to our concerns regarding the schedule set forth in yesterday's Hearing Officer Ruling, and (2) offer an alternative schedule that we believe addresses those concerns. Because CLEC surrebuttal testimony is due this coming Wednesday, only three business days from today, this letter is limited to the date for filing of surrebuttal testimony and related discovery dates; it is our understanding that the Department will consider these comments and rule on that issue quickly. After AT&T and WorldCom have had an opportunity to check with their witnesses, they will file further comment on the Department's proposed hearing dates.

Notwithstanding the extensive delays resulting from Verizon's inaccurate, confusing and – at times – flatly unresponsive “responses” to discovery in this case, neither AT&T nor WorldCom had sought any further change in the hearing dates for this case. Rather, AT&T and WorldCom had sought to move forward to hearings on the established schedule despite problems the current schedule imposes on their resources (explained below), because further delay only delays the relief they seek and benefits Verizon. If, however, the Department for its own reasons desires to change the hearing dates, we believe the CLEC surrebuttal date should be changed as well. Otherwise,

AT&T and WorldCom will be forced to prepare and file surrebuttal testimony at the same time they are preparing reply briefs for filing in the UNE Cost case, D.T.E. 01-20. While AT&T and WorldCom were prepared to make this sacrifice, even though it would compromise the thoroughness of their surrebuttal testimony, in order to reach hearings and a decision as then scheduled, it makes no sense for them to compromise their surrebuttal testimony now, when it would benefit no one, except perhaps Verizon, whose delays created our current predicament. AT&T and WorldCom's specific schedule proposal and additional reasons in support of it are set forth below.

We believe that moving the hearing dates counsels strongly in favor of moving the date for CLEC surrebuttal testimony for several reasons. First, the Hearing Officer Ruling states that "the additional time [afforded by the postponement of the hearings] also may be beneficial to the parties to more fully establish the record in this matter." That potential benefit will largely go unrealized if the date for surrebuttal testimony is not moved back. As the Department knows, the parties to this case have devoted substantial attention to both the Alternative Regulation case (D.T.E. 01-31) and the UNE cost case (D.T.E. 01-20) are now laboring to complete and file reply briefs in D.T.E. 01-20. As an unfortunate result of the timing of events and resource limitations, attention to the special access case -- and particularly the development of surrebuttal testimony and analysis of more recent Verizon discovery responses -- has suffered. Given that the Department has postponed the hearings, we believe this provides an opportunity to permit AT&T and WorldCom to give this critical case more of the attention that it deserves.

Further on the subject of developing the record, we note that the Department has indicated its intent to issue additional discovery. Although we cannot say with certainty whether the responses generated by this would-be discovery would warrant comment in surrebuttal, we can say with certainty that failure to change the date for surrebuttal will guarantee that CLECs will be entirely precluded from even considering it as an option.

Second, we believe that the schedule in the Hearing Officer Ruling unfairly favors Verizon by giving it an inordinately long period of over five weeks to digest CLEC surrebuttal testimony and prepare for cross examination. Indeed, even under the schedule we propose, Verizon has over three weeks to prepare cross examination on CLEC surrebuttal -- substantially longer than the five days it had under the schedule in place prior to yesterday's ruling.

Accordingly, we respectfully suggest that the schedule be revised by adjourning the date for CLEC surrebuttal testimony by two weeks, to Wednesday, April 3, 2002 (*i.e.*, the Wednesday after reply briefs are due in DTE 01-20). Likewise, the cut-off date for discovery would be moved back as well, from Friday, April 12, 2002 to Tuesday, April 23, 2002. As noted above, we will advise the Department regarding the hearing dates as soon as we have had an opportunity to discuss them with our witnesses.

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Thank you for your consideration of our request.

Sincerely,

Jay E. Gruber

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cc: Service List